

IC 23-6-4

Chapter 4. Indiana Business Development Credit Corporation Law

IC 23-6-4-1

"Credit corporation" defined

Sec. 1. As used in this chapter, "credit corporation" means a corporation to which the secretary of state has issued a certificate of election under section 8 of this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-2

"Lending agreement" defined

Sec. 2. As used in this chapter, "lending agreement" means an agreement between a credit corporation and a lending institution, under which the lending institution agrees to lend funds to the credit corporation in accordance with section 13 of this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-3

"Lending institution" defined

Sec. 3. As used in this chapter, "lending institution" means a bank or trust company, industrial loan and investment company, credit union, savings bank, bank of discount and deposit, small loan company, savings association, insurance company or related corporation, partnership, limited liability company, foundation, pension fund, or other institution engaged primarily in lending or investing funds.

As added by P.L.236-1985, SEC.1. Amended by P.L.42-1993, SEC.16; P.L.79-1998, SEC.24.

IC 23-6-4-4

"Loan limit" defined

Sec. 4. As used in this chapter, "loan limit" means, for any member, the maximum amount permitted to be outstanding at any one (1) time on loans made by that member to a credit corporation, as determined by the credit corporation's board of directors.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-5

"Member" defined

Sec. 5. As used in this chapter, "member" means a lending institution authorized to do business in Indiana that enters into a lending agreement with, and undertakes to make member loans to, a credit corporation organized or operated under this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-6

"Member loan" defined

Sec. 6. As used in this chapter, "member loan" means a loan made

by a member upon the call of the credit corporation under its lending agreement with the member and section 13 of this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-7

"Small business concern" defined

Sec. 7. As used in this chapter, "small business concern" means any business entity that qualifies as a small business concern under the applicable section of the federal Aid to Small Business Act (15 U.S.C. 632) and accompanying regulations.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-8

Election to accept chapter; amendment of articles of incorporation; resolution; vote of shareholders; approval; certificate of election

Sec. 8. (a) Any corporation organized before January 1, 1985, under IC 23-1 (the Indiana General Corporation Act) may elect to accept this chapter, and avail itself of the rights, privileges, immunities, and franchises provided by this chapter, by filing in the office of the secretary of state the election described in subsection (b), together with amended articles of incorporation allowing it to operate under this chapter.

(b) The board of directors of a corporation desiring to accept this chapter shall, by a resolution adopted by a majority vote of the board, approve a written election setting forth:

- (1) the name of the corporation;
- (2) the location of its principal office;
- (3) the name and post office address of its resident agent;
- (4) the date of its incorporation; and
- (5) a declaration that it accepts all of the terms and provisions of this chapter.

(c) The resolution of the board of directors electing to accept this chapter and the corporation's amended articles of incorporation shall be submitted to a vote of the shareholders of the corporation entitled to vote on those proposals at a designated meeting called for that purpose. The affirmative votes of the holders of at least two-thirds (2/3) of the outstanding voting shares of the corporation are required for adoption of the election and the amended articles of incorporation. If the election and the amended articles of incorporation are adopted, they shall be signed in duplicate by a current officer of the corporation, verified and affirmed subject to penalties for perjury, and presented in duplicate to the secretary of state at the secretary of state's office.

(d) Upon the presentation of an election and amended articles of incorporation adopted under this section, the secretary of state shall endorse an approval upon both of the duplicate copies of each document, if the secretary determines that they conform to law. If all fees have been paid as required by law, the secretary shall also:

- (1) file one (1) copy of each document in the secretary's office;
- (2) issue a certificate of election to the corporation; and

(3) return the remaining copies bearing the endorsement of the secretary's approval to the corporation.

(e) Upon the issuance of a certificate of election to a corporation by the secretary of state under subsection (d):

- (1) the election becomes effective;
- (2) the corporation is entitled to all of the rights, privileges, immunities, powers, and franchises, and is subject to all of the penalties, liabilities, and restrictions granted to or imposed upon credit corporations organized by this chapter; and
- (3) the amendments to the corporation's articles of incorporation become effective.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-9

Purposes of corporations

Sec. 9. The purposes for which a credit corporation may exist must include the following:

- (1) To assist, promote, encourage, and, through the cooperative efforts of the institutions and corporations that from time to time become members of the credit corporation, develop and advance the business prosperity and economic welfare of Indiana.
- (2) To encourage and assist in the location of new business and industry in Indiana and to rehabilitate existing Indiana business and industry.
- (3) To stimulate and assist in the expansion of all kinds of business activity, primarily through the making of loans and other extensions of credit to small business concerns, for purposes of:
 - (A) promoting the business development and maintaining the economic stability of Indiana;
 - (B) providing maximum opportunities for employment;
 - (C) encouraging thrift; and
 - (D) improving the standard of living of the citizens of Indiana.
- (4) To cooperate with other organizations, public or private, the objectives of which are the promotion and advancement of industrial, commercial, agricultural, or recreational developments in Indiana.
- (5) To furnish money and credit to approved and deserving applicants, primarily small business concerns, for the promotion, development, and conduct of all kinds of business activity in Indiana, and to thereby establish a source of credit not otherwise readily available to those applicants.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-10

Powers of corporations

Sec. 10. In furtherance of its purposes and in addition to the powers conferred on corporations by IC 23-1, a credit corporation

may:

- (1) borrow money from any lending institution or from any agency established under the Small Business Investment Act of 1958 (Public Law 85-699, 72 Stat. 689), as amended, or under other federal or state statutes;
- (2) do all things necessary or desirable to secure aid, assistance, loans, and other financing from its members (whether as member loans or otherwise);
- (3) issue bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and secure any of those instruments by a mortgage, pledge, deed of trust, or other lien on any property, franchise, rights, or privileges of the credit corporation, without securing member or shareholder approval;
- (4) lend money to, and guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, firm, corporation, limited liability company, or association;
- (5) establish and regulate the terms and conditions of transactions entered into under subdivision (4) and the charges for interest and services connected with those transactions;
- (6) acquire any interest in the goodwill, business rights, real and personal property, and other assets of any persons or corporations and assume, undertake, or pay the obligations, debts, and liabilities of that person or corporation;
- (7) acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments;
- (8) acquire, construct, reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;
- (9) acquire, subscribe for, own, sell, hold, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person or corporation and, while the owner or holder of such a property interest, exercise all the rights, powers, and privileges of ownership, including the right to vote;
- (10) acquire and dispose of an interest in any other type of real or personal property, including any real or personal property acquired by the corporation from time to time in the satisfaction of debts or as a result of the enforcement of obligations;
- (11) mortgage, pledge, or otherwise encumber any property, right, or thing of value acquired by the credit corporation as security for the payment of any part of the purchase price for the acquired item;
- (12) cooperate with and avail itself of the facilities of the United States Department of Commerce, the Indiana department of commerce, and any other similar state or federal governmental agencies;
- (13) cooperate with, assist, and otherwise encourage

organizations in the various communities of Indiana in the promotion, assistance, and development of the business prosperity and economic well-being of those communities, Indiana, or any political subdivision of Indiana;

(14) make, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with the laws of Indiana, for the administration and regulation of the affairs of the corporation, which bylaws may:

(A) establish internal governance procedures and standards, including procedures for voting by proxy at and for giving notice of meetings of directors and of members and shareholders, procedures and standards for the payment of dividends, and procedures for the delegation by the board of directors of its authority under the articles of incorporation and this chapter to one (1) or more committees of the board or to officers of the corporation; and

(B) give the board of directors or committees of the board the power to pass resolutions necessary or convenient to carrying out the purposes of the corporation; and

(15) do all acts and things necessary or convenient to carrying out the powers expressly granted in this chapter.

As added by P.L.236-1985, SEC.1. Amended by P.L.8-1993, SEC.318.

IC 23-6-4-11

Persons or entities qualified to participate; shareholders' rights; amount of capital stock acquired

Sec. 11. (a) Notwithstanding any other law, any person, domestic or foreign corporation, public utility company, insurance company, lending institution, or trust may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, other evidence of indebtedness, or shares of the capital stock of a credit corporation. While a shareholder of a credit corporation, such a person or entity may exercise all the rights, powers, and privileges granted other shareholders of the credit corporation, including the right to vote. Except as otherwise specifically provided in this chapter, such a person or entity may take any action authorized by this section without the approval of any Indiana regulatory authority.

(b) The amount of capital stock of a credit corporation that a member may acquire under this section is in addition to the amount of capital stock in corporations that the member may otherwise acquire.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-12

Lending institutions as members; loans

Sec. 12. Notwithstanding any other law, lending institutions may become members of a credit corporation and make loans to the credit corporation as provided in this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-13

Lending agreements; time of membership; evidence of loans; interest

Sec. 13. Any lending institution may become a member of a credit corporation by entering into a lending agreement with the credit corporation on such form and in such manner as the board of directors of the credit corporation may require. Membership in a credit corporation becomes effective upon execution of such an agreement. Each member shall lend funds to the credit corporation according to the terms of the lending agreement. The board of directors of the credit corporation shall determine and approve the terms for lending agreements, subject to the following conditions:

(1) The total amount outstanding on loans to the credit corporation made by any member under its lending agreement or otherwise at any time, when added to the amount of the investment in the capital stock of the credit corporation then held by that member, may not exceed the lesser of:

(A) any limit established by applicable state or federal law;
or

(B) the loan limit for that member.

(2) All loans made to the credit corporation by members must be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the credit corporation.

(3) The board of directors of the credit corporation shall determine the interest rate for the debt instruments referred to in subdivision (2).

As added by P.L.236-1985, SEC.1.

IC 23-6-4-14

Duration of membership; withdrawal of membership

Sec. 14. The board of directors of a credit corporation shall determine the duration of membership in the credit corporation. However, upon written notice given to the credit corporation ninety (90) days in advance, a member may withdraw from membership in the credit corporation. After notice of the intended withdrawal of a member has been received by the credit corporation, the member is not obligated to make any further loans to the credit corporation.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-15

Powers of members and shareholders; voting rights

Sec. 15. (a) Only the members and shareholders of a credit corporation may exercise the following powers of the credit corporation:

(1) To elect directors of the credit corporation as provided in section 16 of this chapter.

(2) To amend the credit corporation's articles of incorporation as provided in section 17 of this chapter.

(3) To dissolve the credit corporation as provided in section 19 of this chapter.

(4) To exercise such other of the powers of the credit corporation, consistent with this chapter, as may be conferred on the members and shareholders by the bylaws of the credit corporation.

(b) As to any matter requiring action by the members and shareholders of the credit corporation, the members and shareholders shall vote separately on that matter by classes. Except as otherwise provided in this chapter, such a matter requires the affirmative vote of at least a majority of the votes to which the members present or represented at the meeting are entitled and the affirmative vote of at least a majority of the votes to which the shareholders present or represented at the meeting are entitled.

(c) Each shareholder has one (1) vote for each share of stock held by the shareholder, and each member has one (1) vote. However, additional votes may be granted to any member or group of members by the articles of incorporation of the credit corporation.

(d) As to any matter requiring action by the members and shareholders of a credit corporation, the members and shareholders may vote either in person or by proxy.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-16

Board of directors; loan committees

Sec. 16. (a) Except as otherwise provided in section 15 of this chapter, the corporate powers of a credit corporation shall be exercised by its board of directors. The board of directors of a credit corporation consists of:

(1) thirteen (13) individuals who are elected to serve as directors by the shareholders and members of the credit corporation; and

(2) two (2) ex officio directors as provided in subsection (c).

Each elected director must be at least eighteen (18) years of age, a citizen of the United States, and a resident of Indiana.

(b) The number of directors to be elected by the shareholders of a credit corporation and the number of directors to be elected by the members of the corporation must be included in the articles of incorporation of the credit corporation.

(c) The treasurer of state and the director of the department of financial institutions shall each serve as an ex officio director of a credit corporation, with the same authority as an elected director, but without liability for that service, except for gross negligence or willful misconduct.

(d) If an elected director of a credit corporation ceases being a citizen of the United States or a resident of Indiana, the individual's position as a director of the credit corporation immediately becomes vacant.

(e) If a vacancy occurs in the elected membership of the board of directors of a credit corporation through death, resignation, or

otherwise, the vacancy shall be filled in the manner prescribed in this subsection. A vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and a vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders.

(f) The board of directors of a credit corporation, by resolution adopted by a majority of the actual number of directors holding office, may establish a loan committee. Except as otherwise provided in this chapter, such a loan committee, to the extent provided in the resolution, may exercise all the authority of the board of directors over the lending operations of the credit corporation. However, only an individual who is a member of the credit corporation's board of directors or who has significant commercial lending experience may serve on the loan committee.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-17

Amendment of articles of incorporation

Sec. 17. (a) Subject to subsection (b), a credit corporation's articles of incorporation may be amended by the members and shareholders of the corporation. The members and shareholders shall vote on proposed amendments in the manner prescribed by section 15 of this chapter. However, the affirmative vote of at least two-thirds (2/3) of the votes to which each class is entitled is required for adoption of an amendment.

(b) An amendment to the articles of incorporation that is inconsistent with the general purposes expressed in this chapter or that authorizes any additional class of capital stock to be issued may not be adopted. In addition, an amendment of the articles of incorporation that:

(1) increases the obligation of a member to make loans to the credit corporation;

(2) makes any change in the principal amount, interest rate, maturity date, or security or credit position of any outstanding loan of a member to the credit corporation; or

(3) affects a member's voting rights;

may not be made without the consent of each member affected by the amendment.

(c) An amendment to the articles of incorporation of a credit corporation shall be filed with the secretary of state. The amendment takes effect on the date of that filing.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-18

Deposits of funds

Sec. 18. (a) A credit corporation may deposit its funds only in a financial institution that has been designated as a depository by a vote of a majority of the directors of the credit corporation present at an authorized meeting of the board of directors. However, a director of the credit corporation who is also an officer or director of a

financial institution may not vote on a proposal to designate that financial institution as a depository and may not be counted as being present when a vote on such a proposal is taken.

(b) A credit corporation may not receive money on deposit.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-19

Period of existence; dissolution of corporation

Sec. 19. (a) The period of existence of a credit corporation must be perpetual, subject to the right of the members and shareholders to dissolve the corporation under subsection (b).

(b) The members and shareholders of a credit corporation may dissolve the credit corporation. The members and shareholders shall vote on a proposal to dissolve the credit corporation in the manner prescribed by section 15 of this chapter. However, the affirmative vote of at least two-thirds (2/3) of the votes to which each class is entitled is required to dissolve the credit corporation.

(c) Upon dissolution of a credit corporation, none of the credit corporation's assets may be distributed to the shareholders until all sums due the members and creditors of the credit corporation have been paid in full.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-20

State development company

Sec. 20. A credit corporation is a state development company, as defined in the Small Business Investment Act of 1958 (P.L.85-699, 72 Stat.689) or any similar federal statute, and is authorized to operate on a statewide basis.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-21

Exemptions; securities registration; taxation; financial institutions regulation

Sec. 21. (a) Any securities issued by a credit corporation are exempt from registration under, or compliance with, IC 23-2-1.

(b) Any tax exemptions, tax credits, or tax privileges granted to banks, savings and loan associations, trust companies, and other financial institutions by Indiana law are granted to a credit corporation.

(c) A credit corporation is exempt from regulation under, or compliance with, IC 28-1-1 through IC 28-1-23. However, the department of financial institutions shall conduct an annual examination of the credit corporation for the purpose of determining its financial condition.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-22

Reports

Sec. 22. Each credit corporation shall make an annual report of its

condition to the governor and the general assembly before March 2 of each year. An annual report under this section to the general assembly must be in an electronic format under IC 5-14-6.

As added by P.L.236-1985, SEC.1. Amended by P.L.28-2004, SEC.162.

IC 23-6-4-23

Application of IC 23-1

Sec. 23. IC 23-1 applies to a credit corporation. However, if there is a conflict between IC 23-1 and this chapter, this chapter controls.

As added by P.L.236-1985, SEC.1.